

Emperor Vs. Mohanlal Aditram

Emperor Vs. Mohanlal Aditram

SooperKanoon Citation : sooperkanoon.com/339371

Court : Mumbai

Decided On : Jul-04-1928

Reported in : (1928)30BOMLR1253; 113Ind.Cas.617

Judge : Mirza, J.

Appeal No. : Case No. 9 and Third Criminal Sessions, 1928

Appellant : Emperor

Respondent : Mohanlal Aditram

Judgement :

Mirza, J.

1. The Presidency Magistrate, 4th Court, has committed the accused to take his trial before this Court on two charges, The first charge is under Section 366 of the Indian Penal Code. The accused is charged under that head with having on April 3, 1928, at Bombay, kidnapped a girl Manibai with intent that she may be forced to illicit intercourse or knowing it to be likely that she would be forced to illicit intercourse. The second charge is under Sections 376 and 114 of the Indian Penal Code, It runs as follows:-

That you did aid and abet one Manilai (at large) who oommitted rape on April 4, 1928, on the girl Manibai at Ahmedabad and thereby committed an offence

punishable under Section 376 read with Section 114 of the Indian Penal Code and within the cognizance of the High Court.

2. The offence of rape is alleged to have been committed at Ahmedabad and the accused is alleged to have abetted that offence by his presence and would therefore be liable to the same degree of punishment as the offender. The offence of abetment, with which the accused is charged, is alleged, therefore, to have taken place at Ahmedabad. Section 177 of the Criminal Procedure Code provides that :-

Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

3. It is clear, in my opinion, that this Court has no jurisdiction to try the second offence with which the accused is charged.

4. Mr. Gokhale, on behalf of the prosecution, has applied for leave to amend the second charge by omitting from it the charge under Section 114 of the Indian Penal Code and substituting for it a charge under Section 109 of the Indian Penal Code. Mr. Husseinbhai, on behalf of the accused, opposes that application. The proposed amendment, in my opinion, would materially alter the nature of the case which the accused has been called upon to meet, and at this late stage I would not entertain the application.

5. I order the second charge to be withdrawn from the jury. The accused will be discharged in respect of that charge; the discharge of course will not amount to an acquittal.

6. The case will proceed only on the first charge.